2340.

SUPREME COURT OF THE UNITED STATES.

No. 193.

DULLES, WILCOX AND WELSH, PL'FFS IN ERROR,

vs.

RICHARD S. JONES.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

Exemplification.

DULLES, WILCOX & WELSH, vs. RICHARD S. JONES. } 1458.

Pleas had at a district court of the United States for the northern district of Mississippi, began and held at the town of Pontotoc on the first Monday of June, A. D. 1846—

Present, the Hon. Samuel J. Gholson, judge thereof.

Be it remembered, that on the 6th day of May, A. D. 1846, Joseph H. Dulles, Edward Wilcox, and John Welsh, late merchants and partners, under the firm and style of Dulles, Wilcox & Welsh, citizens of the State of Pennsylvania, sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, their certain summons, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Richard S. Jones, a citizen of the northern district of the State of Mississippi, that he be and appear before the district court of the United States to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to Joseph H. Dulles, Edward Wilcox, and John Welsh, merchants and partners in trade, trading under the firm and by the name and style of Dulles, Wilcox & Welsh, who are citizens of the State of Pennsylvania, of a plea of debt that he render unto them the sum of seventeen hundred and fifty dollars and twenty-five cents, which to them he owes, and from them he unjustly detains, to their damage $1,000, and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default, and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at
[L. S.] Pontotoc, the first Monday of December, A. D. 1845, and 70th year of the independence of the United States.

Issued the 6th day of May, 1846.

G. M. RAGSDALE, *Clerk.*

Which said summons was endorsed as follows, to wit:

This action of debt is brought by the plaintiff, and is founded on the record of a judgment in the district court of the United States for the northern district of Alabama, at Huntsville, obtained 21st May, 1839, for the sum of seventeen hundred and fifty dollars and twenty-five cents,

for debt, damages, and costs; which is the sum actually demanded in this action. Declaration filed at the time of issuing this writ; judgment will be required at the return term.

DAVIS, ACKER & GOODWIN,
Att'ys for plaintiffs.

Upon which said summons the marshal made the following return, to wit: Received 6th May, 1846.

A. A. KINCANNON, *Marshal.*
By his deputy A. BEAN.

Executed May 6th, 1846.

A. A. KINCANNON, *Marshal.*
By his deputy A. BEAN.

Writ and copy,	$3 00
Mileage,	2 25
	$5 25

At the issuance of said writ the plaintiffs, by attorney, filed their certain declaration, in the words and figures following, to wit:

United States of America, in the district court of the United States for the northern district of the State of Mississippi.

At the June term, 1846, Joseph H. Dulles, Edward Wilcox, and John Welsh, merchants and partners, trading under the firm and by the name and style of Dulles, Wilcox & Welsh, who are citizens of the State of Pennsylvania, by attorney, complains of Richard S. Jones, who is a citizen of the northern district of the State of Mississippi, in custody of the marshal, &c., of a plea of debt, that he render unto them the sum of seventeen hundred and fifty dollars and twenty-five cents, which to them he owes, and from them he unjustly detains.

For that whereas the said plaintiffs heretofore, to wit, at the May term, 1839, of the district court of the United States for the northern district of Alabama, holden at the term of Huntsville in said district, to wit, on the third Monday of May, 1839, before the honorable William Crawford, judge of said court presiding, by the consideration and judgment of said district court recovered against the said defendant, (and Walter Simpson, John C. Simpson, and James E. Jones, the latter of whom are not citizens of the northern district of the State of Mississippi, and are not sued in this action,) as well the sum of sixteen hundred and eighty-nine dollars for their debt and damages which they had sustained by reason of the non-payment of the debt in the declaration mentioned, as also the sum of sixty-one dollars and twenty-five cents, for their costs in that behalf expended, which were then and there adjudged to the said plaintiffs, whereof the said defendant is convicted; which said judgment still remains in that court, in full force and effect, in no wise satisfied, recovered, or annulled; that is to say, at Huntsville, Alabama, to wit, in the district aforesaid. And the said plaintiffs, in fact, say,

that they have not yet obtained execution of said judgment, and that the debt, damages and costs aforesaid, still remain due and unpaid, whereby an action hath accrued to the said plaintiffs to demand and have, of and from the said defendant, the said sum of seventeen hundred and fifty dollars and twenty-five cents, the sum above demanded.

Yet the said defendant, although often requested so to do, hath not as yet paid the said plaintiffs said sum of money above demanded, or any part thereof, but to pay the same he hath hitherto wholly neglected, failed, and refused, and still doth neglect, fail, and refuse so to do, to the damage of the said plaintiffs of one thousand dollars, and therefore they sue, &c.

DAVIS, ACKER & GOODWIN,
Attys. for the plffs.

Transcript sued on, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

Pleas had at a term of the district court of the United States for the northern disttict of Alabama, began and held at the court-house in the town of Huntsville, in said district, on the third Monday (being the twentieth day) of May, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-third.

Present, the Hon. William Crawford, judge of the said district court.

DULLES, WILCOX & WELSH,
vs.
WALTER SIMPSON, RICHARD S. JONES, JOHN C. SIMPSON, and JAMES E. JONES. } 530.

Be it remembered, that heretofore, to wit, at a term of the district court of the United States for the northern district of Alabama, begun and held at the court-house for said district, in the town of Huntsville, in the district aforesaid, on the fourth Monday in November, in the year of our Lord one thousand eight hundred and thirty-eight, was returned a writ of capias ad respondendum, in the name of Jos. H. Dulles, Edward Wilcox, and John Welsh, merchants and partners, trading under the name, firm, and style of Dulles, Wilcox & Welsh, plaintiffs, against Walter Simpson, Richard S. Jones, John C. Simpson, and James E. Jones, defendants, in the words and figures following, to wit:

The President of the United States of America, to the marshal of the northern district of Alabama, greeting:

We command you to take the bodies of Walter Simpson, Richard S. Jones, John C. Simpson, and James E. Jones, who are citizens of the State of Alabama residing in said district, if to be found therein, and them safely keep, so that you have their bodies before the honorable the judge of the district court of the United States for said district, to be held at Huntsville therein, on the fourth Monday in November next, to answer Joseph H. Dulles, Edward Wilcox, and John Welsh, merchants and partners, trading under the name, firm, and style of Dulles,

Wilcox & Welsh, who are citizens of the State of Pennsylvania, of a plea that they render unto them fifteen hundred and forty-five dollars and eighty-two cents, which to them they owe, and from them unjustly detain, to their damage five hundred dollars. Fail not herein, and have then and there this writ.

Witness the honorable William Crawford, judge of said court, this twenty-fifth day of August, in the year of our Lord one thou-
[L. S.] sand eight hundred and thirty-eight, and in the sixty-third year of American independence.

Issued 25 day of August, 1838.

Attest: B. T. MOORE,
Clerk of said court.

Endorsed.—This action of debt is founded on a promissory note, executed by the defendants in favor of the plaintiffs, dated Huntsville, Alabama, April 24th, 1837, payable and negotiable on the first day of April, 1838, at the branch of the Bank of the State of Alabama, at Decatur, for the sum of fifteen hundred and forty-five dollars and eighty-two cents; all of which is due and unpaid. No bail required.

WALLIS & LEWIS, *P. Q.*

Marshal's receipt and return.

Received 29th August, 1838; executed on James E. Jones, 3rd September, 1838.

B. PATTISON, *Marshal.*
By his deputy GEO. COX.

Executed on Walter Simpson and John C. Simpson, 12th October, 1838.

BENJ. PATTISON,
Marshal of the northern district of Alabama.
By his deputy JOHN DOE.

Executed on Richard S. Jones, 15th October, 1838.

BENJ. PATTISON,
Marshal of the northern district of Alabama.
By his deputy L. M. GUY.

And at the said term of said district court came the said plaintiffs, by their attorneys, and filed their declaration in said cause, in the words and figures following, to wit:

District court of the United States for the northern district of Alabama, November term, 1838.

Joseph H. Dulles, Edward Wilcox, and John Welsh, merchants [and] partners, trading under the firm and style of Dulles, Wilcox and Welsh, who are citizens of the State of Pennsylvania, plaintiffs, by attorney complains of Walter Simpson, Richard S. Jones, John C. Simpson, and James E. Jones, who are citizens of the State of Alabama, residing in the northern district thereof, defendants, in custody, &c., of a plea that the said defendants render unto them, the said plaintiffs, the

sum of fifteen hundred and forty-five dollars and eighty-two cents, which they, the said defendants, owe to and unjustly detain from them, the said plaintiffs; for that the said defendants, on the 24th day of April, 1837, at Huntsville, Alabama, to wit, in the district aforesaid, by their names and signatures of W. Simpson, Richard S. Jones, John C. Simpson, and James E. Jones, made their certain promissory note, in writing, bearing date the day and year aforesaid, and then and there delivered the said note to the said plaintiffs; by which said note they, the said defendants, then and there promised to pay on the 1st day of April, 1838, to the said plaintiffs, or order, by their said partnership name of Dulles, Wilcox and Welsh, the sum of fifteen hundred and forty-five 82-100 dollars, for value received, payable and negotiable at the branch of the Bank of the State of Alabama, at Decatur; by means whereof, the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said note specified, according to the tenor and effect of the said note; and although the said sum of money in the said note specified, hath, according to the tenor and effect of said note, been long since due and payable, yet the said defendants (although requested so to do) have not as yet paid them the said sum of money, or any part thereof, but have hitherto wholly neglected and refused so to do, whereby an action hath accrued to the said plaintiffs to demand and have, of and from the said defendants, the said sum of money in the said note specified, to the damage of the said plaintiffs of five hundred dollars; and therefore bring this suit, &c.

WALLACE & LEWIS, *P. Q.*

And now afterward, to wit, on the thirty-first day of May, being a day of the term of the district court of the United States for the northern district of Alabama, began and held for said district at the court-house in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and thirty-nine, come the plaintiffs, by their attorneys, and the said defendants being solemnly called come not, but make default. It is therefore considered by the court, that said plaintiffs recover against said defendants said sum of fifteen hundred and forty-five dollars and eighty-two cents, the debt in said plaintiffs' declaration specified, and one hundred and forty-three dollars and eighteen cents damages for the detention of the same, together with the costs herein expended, &c.

Judgment 21 May, 1839.

Debt $1,545 82, damages $143 18, costs $61 25.

THE UNITED STATES OF AMERICA,
Northern district of Alabama:

I, Benjamin T. Moore, clerk of the district court of the United States for the northern district of Alabama, certify, that the above and foregoing pages contain a full, true, and complete transcript of the record and proceedings had in the cause in said court, wherein Dulles, Wilcox and Welsh are plaintiffs, and Walter Simpson, Richard S. Jones, John C. Simpson, and James E. Jones are defendants.

In testimony whereof I hereto subscribe my name, and affix the seal of said district court, at office in the town of Huntsville, in [L. S.] said district, this nineteenth day of January, A. D. one thousand eight hundred and forty-six, and of the independence of the United States the seventieth.

B. T. MOORE, *Clerk.*

THE UNITED STATES OF AMERICA,
Northern district of Alabama:

I, William Crawford, judge of the district court of the United States for the northern district of Alabama, do certify, that Benjamin T. Moore, whose name is subscribed to the foregoing attestation, is now, and was at the date of the same, the clerk of said district court, and that his said attestation is in due form.

Given under my hand this second day of March, eighteen hundred and forty-six.

WM. CRAWFORD.

Defendant's plea, filed by attorney June 3rd, 1846, as follows, to wit:

The United States of America, district court for the northern district of Mississippi.

JOSEPH H. DULLES
vs.
RICHARD S. JONES.

And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and says that the said plaintiff, his action aforesaid ought not to have or maintain against him, because he says that the said judgment upon which this suit was obtained, in a court out of the limits of the State of Mississippi, to wit, the district court of the United States for the northern district of Alabama, holden at the town of Huntsville, in said district, and was rendered up against said defendant on the 21st day of May, in the year 1839, and was then and there, on that day, in full force and effect in said court.

And defendant further says, that by an act of the legislature of the State of Mississippi, entitled "An act to amend the several acts of limitations," approved on the 24th day of February, 1844, it is enacted and declared, that in judgment obtained in any court out of the limits of this State, actions shall be commenced within two years after the passage of this act, and not afterwards; and that this action was not commenced by this plaintiff until the two years had expired, within which the said plaintiff was required to bring his suit as aforesaid, and this he [is] ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action against him, &c.

LINDSEY & COPP,
For defendant.

And for further plea in this behalf defendant says, that the said plaintiff ought not to have or maintain his aforesaid action against him, be-

cause he says that said supposed cause of action, in the said declaration mentioned, did not accrue to the said plaintiff at any time within two years before the commencement of this suit, in manner and form as the said plaintiff hath above complained against said defendant, and this he is ready to verify; wherefore he prays judgment, &c.

LINDSEY & COPP,
For defendant.

And for further plea in this behalf the said defendant says, actio non, because he says that the judgment upon which this action is founded was obtained in a court out of the limits of the State of Mississippi, to wit, the district court of the United States for the northern district of Alabama, on the 21st May, 1839, and that the supposed cause of action upon the same, in the said declaration mentioned, did not accrue to the said plaintiff within two years before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against him, and this he is ready to verify; wherefore he prays judgment, &c.

LINDSEY & COPP,
For defendant.

Plaintiffs' replication to defendant's plea, defendant's demurrer to plaintiffs' replication, and plaintiffs' joinder to defendant's demurrer, filed June the 3rd, A. D. 1846, in the words and figures following, to wit:

DULLES, WILCOX & WELSH,
vs.
R. S. JONES. } 496.

District court of the United States, at the June term, 1846.

And the said plaintiffs, for replication to the plea of the said defendant by him first above pleaded, says precludi non, because he says that the said defendant, from the time of the rendition of the judgment in the said plea mentioned, and from thence until and within two years next before the commencement of this suit, to wit, on the sixth day of May, A. D. 1846, to wit, at the district aforesaid, was and continued to be a citizen of the State of Alabama, without the jurisdiction of this court; and this he prays may be inquired of by the country.

DAVIS, ACKER & GOODWIN,
Atty's for plaintiffs.

DULLES, WILCOX & WELSH,
vs.
R. S. JONES.

And the said defendant saith, that the replication of the said plaintiff to the said plea of the said defendant, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this

the said defendant is ready to verify; wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c. And the said defendant, according to the form of the statute in such case made and provided, states, and shows to the court here, the following causes of demurrer in law to the said replication; that is to say, that the said replication alleges that the said defendant, at and from the time of the rendition of said judgment in said plea and declaration mentioned, and from thence and until within two years next before the commencement of this suit, to wit, the 6th day of May, 1846, to wit, at the district aforesaid, was, and continued to be, a citizen of the State of Alabama, and resided without the jurisdiction of this court; and also, for that the said replication is in other respects uncertain, informal, and insufficient, &c.

LINDSEY & COPP,
For defendant.

DULLES, WILCOX & WELSH,
against
RICHARD S. JONES.

And the said plaintiffs say that the said replication, and the matters therein contained, in manner and form as the same are stated and set forth, are sufficient in law for them, the said plaintiffs, to have and maintain their aforesaid action thereof against the said defendant, and the said plaintiffs are ready to verify and prove the same, as the court here shall direct and award; wherefore, inasmuch as the said defendant hath not answered the said replication, nor hitherto in any manner denied the same, the said plaintiffs pray judgment, &c.

DAVIS, ACKER & GOODWIN,
Attorney for plaintiffs.

Afterwards, to wit, on the 3rd day of June, being a day of the June term of said court, 1846, the aforesaid cause was continued thus:

Wednesday, June the 3rd, 1846.

DULLES, WILCOX & WELSH,
vs.
RICHARD S. JONES. } 495.

This cause is continued, by operation of law, until the next term of this court.

And afterwards, to wit, on the 8th day of December, being a day of the December term, 1846, of said court, the following proceedings were had by the court in the aforesaid cause of Dulles, Wilcox & Welsh, vs. Richard S. Jones, to wit:

Tuesday, December the 8th, 1846.

DULLES, WILCOX & WELSH,
vs.
RICHARD S. JONES. } 495.

This day came the parties, by their attorneys, and thereupon came

on to be heard defendant's demurrer to plaintiffs' replication; and, after argument, it is considered by the court that the same be sustained, and that said plaintiffs have leave to reply over; which being declined, it is ordered that defendant go hence, and recover of said plaintiffs the costs which have accrued in this behalf.

Appeal bond filed (and writ of error issued) 10th of December, 1846, in the words and figures following, to wit:

Know all men by these presents, that we, Joseph H. Dulles, Edward Wilcox, John Welsh, and John Goodwin, are held and firmly bound unto Richard S. Jones in the just and full sum of four hundred dollars; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 10th day of December, A. D. 1846.

The condition of the above obligation is such, that whereas, at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc in said district, on the first Monday of December, 1846, in a suit pending between Joseph H. Dulles, Edward Wilcox, and John Welsh, plaintiffs, and said Richard S. Jones, defendant, judgment was rendered by said court in favor of said Richard S. Jones that he go hence without day, and recover of said Joseph H. Dulles, Edward Wilcox, and John Welsh, the costs in that behalf expended to be taxed, and the said Joseph H. Dulles, Edward Wilcox, and John Welsh, have sued out a writ of error to the Supreme Court of the United States to reverse said judgment.

Now, if the said Joseph [H.] Dulles, Edward Wilcox, and John Welsh, shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of all costs and damages which said Supreme Court of the United States shall adjudge in the premises, in the event the said Joseph [H.] Dulles, Edward Wilcox, and John Welsh, shall fail to make good their plea, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

JOSEPH H. DULLES, [L. S.]
EDWARD WILCOX, [L. S.]
JOHN WE[L]SH, [L. S.]
By J. GOODWIN, *Att'y.* [L. S.]
JOHN GOODWIN.

I approve the above bond and surety, this 10th December, 1846.

S. J. GHOLSON,
Judge U. S. D. C. for dist. Miss.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, certify that the above and foregoing pages, from 1 to 11, inclusive, contain a full, true, and complete transcript of the record and proceedings had in the aforesaid cause of Dulles, Wilcox and Welsh, vs. Richard S. Jones, in said district court, as the same appears of record and on file in my office.

I further certify, that the writ of error and citation herewith filed are the originals, true copies of which remain on file.

Given under my hand, and the seal of said court, at office in Pon-
[L. S.] totoc, this, the 12th, day of August, A. D. 1847.

G. M. RAGSDALE, *Clerk.*

DULLES, WILCOX & WELSH,
vs.
RICHARD S. JONES.

And the said plaintiffs, by attorney, come, and for cause of error in the record and proceedings in the district court of the United States for the northern district of Mississippi, assign the following, to wit:

1. The said district court erred in sustaining the defendant's demurrer to the plaintiffs' replication to the first plea of the said defendant.

2. The said district court erred in not giving judgment for the plaintiffs upon said demurrer.

3. For these, and other errors apparent upon the face of the record, the said plaintiffs pray that said judgment may be reversed.

R. DAVIS,
Attorney for plaintiffs.

And the defendant says in this there is no error.

S. ADAMS, *For def't.*

It is agreed that this record may be filed, and cause continued for argument at the December term, 1848, of the Supreme Court of the United States.

S. ADAMS, *For defendant.*
R. DAVIS, *For plaintiff.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court before you, between Jos. H. Dulles, Edward Wilcox, and John Welsh, late partners in trade, under the name and style of Dulles, Wilcox & Welsh, plaintiffs, and Richard S. Jones, defendant, a manifest error hath happened, to the great damage of the said Dulles, Wilcox and Welsh, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to law and custom of the United States, should be done.